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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91201093
Party	Defendant Power Force, LLC
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Date	09/18/2011
Attachments	power force tm op answer.pdf (6 pages)(134917 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application Serial No.:	85/134,611
Filed:	September 21, 2010
For the mark:	POWER FORCE
Published in the Official Gazette on:	April 12, 2011

POWER BALANCE, LLC,)	
)	
Opposer,)	Opposition No: 91201093
)	
v.)	Opposer's File No.: M224022
)	
POWER FORCE, LLC,)	
)	
Applicant.)	

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
Post Office Box 1451
Alexandria, VA 22313-1451

ANSWER

Power Force, LLC (“Applicant”) a corporation organized and existing under the laws of the State of Alabama having a principle place of business at 2000 Eagle Point Corporate Drive, Birmingham, Al 35242 answers the Notice of Opposition filed by Power Balance, LLC (“Opposer”) as follows:

Applicant admits that it owns Application Serial No. 85134611 for the Mark POWER FORCE which was published for opposition in the Official Gazette on April 12, 2011 and for which Opposer filed for and was granted an extension of time to oppose. Applicant denies the remainder of the allegations in Opposer’s first unnumbered paragraph. Further, the Applicant answers as follows:

1. Applicant admits the allegations in paragraph 1.
2. Applicant admits that Opposer is the owner of the Power Balance registrations.
3. Applicant admits that Opposer has pending applications with the Register of the United States Patent and Trademark Office for the Mark POWER BALANCE.
4. Applicant lacks information sufficient to form a belief as to the truth or falsity of the allegation contained in Opposer's fourth numbered paragraph and therefore denies the same.
5. Applicant denies the allegations contained in Opposer's fifth paragraph.
6. Applicant denies the allegations contained in Opposer's sixth paragraph.
7. Applicant denies the allegations contained in Opposer's seventh paragraph.
8. Applicant denies the allegations contained in Opposer's eighth paragraph.
9. Applicant denies that Opposer will be damaged by the registration of Applicant's Mark.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Opposer fails to state a claim upon which relief can be granted.

Second Affirmative Defense

As a result of Applicant's continuous use of the Mark since the time of Applicant's adoption thereof, the Mark has developed significant goodwill among the consuming public and achieved significant consumer acceptance of the products offered by Applicant in conjunction with the Mark. Such goodwill and widespread usage has caused the Mark to acquire distinctiveness with respect to the Applicant, and caused Mark to become a valuable asset of Applicant.

Third Affirmative Defense

There is no likelihood of confusion, mistake or deception because inter alia, the Mark and alleged Trademark of Opposer are not confusingly similar.

Fourth Affirmative Defense

Alternatively, any similarity between the Mark and Opposer's alleged Trademark is restricted to that portion of the Mark consisting of the word "Power" which is not distinctive. As a result, in accordance with the anti-dissection rule, any secondary meaning Opposer may have in its alleged "Power Balance" Mark is narrowly circumscribed to the exact Trademark alleged and does not extend to any other feature of the Mark beyond the word "Power".

Fifth Affirmative Defense

Opposer rights in and to the "Power" portion of its "Power Force" is generic or in the alternative, simply descriptive of the goods or services under the Mark. Opposer alleged Mark is therefore inherently not appropriate for protection absent any acquired distinctiveness which the "Power Balance" Mark lacks.

Sixth Affirmative Defense

Applicant has been using Mark and has developed consumer recognition and goodwill therein since the filing of the application.

Seventh Affirmative Defense

There is no likelihood of confusion, mistake or deception due to the difference in appearance between Applicant's Mark and Marks asserted by Opposer.

Eighth Affirmative Defense

Precluded by the doctrine of laches.

Ninth Affirmative Defense

Precluded by the doctrine of acquiescence.

Tenth Affirmative Defense

Opposer can not own the word “POWER”. Applicant denies that Opposer has prior use of rights in and to all Marks consisting of or compromising of the word “POWER”.

Eleventh Affirmative Defense

Opposer does not own the word or family of words consisting of “POWER” Marks because the public does not associate all Marks containing the highly suggestive term “POWER” exclusively with the Opposer.

Twelfth Affirmative Defense

Opposer’s alleged Marks are weak and entitled to a narrow scope of protection due to the large number of previously registered and currently in use Marks which include the word POWER in connection with related goods and services.

Thirteenth Affirmative Defense

There is no likelihood of confusion because the Marks are distinguishable, the parties’ goods are different and distinguishable, and the consumers of both parties’ goods and services are knowledgeable and sophisticated.

Applicant reserves the right to raise additional defenses as may become known during the discovery and/or testimony periods of this opposition.

WHEREFORE, Applicant prays as follows:

- (a) this opposition be dismissed;
- (b) a registration for the Mark POWER FORCE be issued to the Applicant; and
- (c) other such relief as the Board deems just and equitable be granted to the Applicant.

Please recognize as attorneys for Applicant in this proceeding E. Kirk Wood, member of the Bar of the States of Alabama and Florida, and Michael E. Gurley, member of the Bar of the State of Alabama, whose address is Wood Law Firm, LLC 2001 Park Place North, Suite 1000 Birmingham, Al 35203.

This the 16th day of September, 2011.

Respectfully submitted,
/s/ E. Kirk Wood

E. Kirk Wood
Michael E. Gurley

Wood Law Firm, LLC
2001 Park Place North
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Birmingham, AL 35203

Attorneys for Applicant
Power Force, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this the 16th day of September, 2011, a copy of the foregoing Answer was served on Opposer by mailing a copy to Opposer Attorney of Record at:

Patchen M. Haggerty
Dorsey & Whitney LLP
701 Fifth Avenue, Suite 6100
Seattle, WA 98104
Email: haggerty.patchen@dorsey.com

_____/s/E. Kirk Wood_____
E. Kirk Wood